



Texas Department of Transportation

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June 26, 2008

Mr. Joey Longley
Director
Sunset Advisory Commission
P.O. Box 13066
Austin, Texas 78711-3066

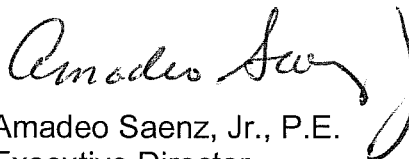
Dear Mr. Longley:

Thank you for the opportunity to respond to the Sunset Staff Report on the Texas Department of Transportation (TxDOT). The department's review through the Sunset process is a welcome opportunity to improve upon our operations and become more transparent, responsive, effective and efficient. We do have several comments included in the attachment which I hope you and your staff will find helpful.

I would also like to take this opportunity to express our gratitude and appreciation to Jennifer Jones, TxDOT Project Manager, and the review team of Karl Spock, Katharine Teleki, Hector Morales and Joe Walraven for their dedication and support throughout this process. I speak on behalf of all of my staff in recognizing them for their outstanding and professional efforts on this review.

We look forward to continuing our work with the Sunset Advisory Commission and staff as we move forward through this process. Please feel free to contact me at (512) 305-9501 if I can be of any assistance, or you may contact Jefferson Grimes, Government and Public Affairs Division, at (512) 475-3097.

Sincerely,



Amadeo Saenz, Jr., P.E.
Executive Director

Enclosure

cc: Texas Transportation Commission
Susan Sampson, Director, Automobile Burglary and Theft Prevention Authority
Jefferson Grimes, Government and Public Affairs Division, TxDOT

THE TEXAS PLAN

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TEXAS DEPARTMENT OF TRANSPORTATION

Response to the Sunset Advisory Commission Staff Report

Issue 1

Until Trust in the Texas Department of Transportation (TxDOT) Is Restored, the State Cannot Move Forward to Effectively Meet Its Growing Transportation Needs.

Recommendations for Changes in Statute

- 1.1 Abolish the Texas Transportation Commission and replace it with an appointed Commissioner of Transportation.**

The department has no comment.

- 1.2 Establish a Transportation Legislative Oversight Committee to provide necessary oversight of the Department and the state's transportation system.**

The department has no comment.

- 1.3 Require the Transportation Legislative Oversight Committee to review and comment on TxDOT's research program, including individual research projects and activities.**

This recommendation states the Transportation Legislative Oversight Committee will "review and comment" on TxDOT's research program, but later states in the explanation it shall provide "comments or direction" to TxDOT on research projects. This seems inconsistent and may require further clarification. It should be noted that TxDOT's Research and Technology Implementation Office currently provides annual updates on published reports to the Texas State Library and Archives Commission.

Recommendation for Change in Appropriations

- 1.4 The Sunset Commission should recommend that the Legislature directly fund the Texas Transportation Institute to conduct transportation research previously contracted through TxDOT.**

This recommendation states that TxDOT is to present its entire research program to the Transportation Legislative Oversight Committee, but later references research used for transportation policy. It seems unclear as to whether this recommendation applies to technical research as well. In addition, research performed by the Texas Transportation Institute (TTI) is generally technical in nature and not policy-driven. Also, TTI currently receives some direct appropriations out of the State Highway Fund to fund TTI operations with \$14.3 million for the current biennium.

A direct allocation for research funding to TTI for all research could unintentionally restrict other state universities from participating in our research program. For contracted research, TTI typically competes for the contract with other state-funded universities in Texas by submitting a proposal, and this could eliminate competition. With several Texas universities currently participating in our agency's research program, such funding assists them with attracting quality graduate students. With a lack of TxDOT funding for research, graduate students could possibly be discouraged from attending other universities. Including multiple universities in the program brings immense talent, diversity and different ideas to solving our transportation challenges.

A possible solution could be to consider a percentage-based awarding of research funding to ensure smaller and historically underutilized universities still receive valuable funding. Coordination with the Federal Highway Administration (FHWA) would also be necessary as 80% of the State Planning and Research funding for TxDOT's technical research program is currently federally funded.

Recommendation for Change in Statute

1.5 Continue TxDOT for four years.

The department has no comment.

Issue 2

The State's Complicated Transportation Planning and Project Development Process Frustrates Understanding of How Important Decisions Are Made.

Recommendations for Changes in Statute

2.1 Require TxDOT to redevelop and regularly update the long-range Statewide Transportation Plan describing total system needs, establishing overarching statewide transportation goals, and measuring progress toward those goals.

The department concurs with this recommendation.

2.2 Establish a transparent, well-defined, and understandable system of project programming within TxDOT that integrates project milestones, forecasts, and priorities.

The department concurs that formalizing the Project Selection Process through rulemaking, including the development of funding formulas, program funding categories and the Unified Transportation Program (UTP), is appropriate. It should be noted that this will be a significant undertaking with substantial costs and require a large amount of staff resources to complete. However the process would become more uniform and understandable for future use.

2.3 Require TxDOT districts to develop detailed work programs driven by milestones for major projects and other statewide goals for smaller projects.

TxDOT currently provides project status reports to the Texas Congressional Delegation and state legislators as part of the General Appropriations Act, Rider 20 from the 80th Legislative Session. This information is updated quarterly and available on www.txdot.gov/apps/rider14/. In addition, the department is currently updating a program to include an online map to inform legislators which projects are within their legislative district.

The department also has an internal task force to assist with identifying areas for monitoring and reporting project development. We can incorporate the aspects discussed in this recommendation into the process.

2.4 Require TxDOT, with input from transportation partners and policymakers, to develop a system to measure and report on progress in meeting transportation goals and milestones.

The department concurs with this recommendation and will continue to seek input from our transportation partners and policymakers on the planning process and progress reporting.

2.5 Require TxDOT to establish, and provide funding and support for, transportation planning in rural areas of the state.

A statutory requirement for coordination of transportation planning would formalize a process established by TxDOT through transportation planning rules. The current rules include provisions for rural Transportation Improvement Programs (TIPs) developed by TxDOT in consultation with local officials, and must be consistent with the statewide transportation plan developed under federal and state law. The rules require the development of a public involvement process for the development of rural TIPs, including public meetings and hearings for the purpose of obtaining comments on the proposed rural TIP. Projects must be selected in accordance with prescribed project selection procedures and in consultation with affected local officials. The department would like to see rulemaking related to any statutory requirements carefully considered so as not to have the project selection process affected by parochial views.

Issue 3

TxDOT Does Not Meet the High Expectations Placed on It to Ensure Consistent, Meaningful Public Involvement.

Recommendations for Changes in Statute

3.1 Require TxDOT to develop and implement a public involvement policy that guides and encourages more meaningful public involvement efforts agencywide.

The department concurs with this recommendation and we are currently working on ways to be sure public involvement opportunities are apparent through the department's website.

3.2 Require TxDOT to develop standard procedures for documenting complaints and for tracking and analyzing complaint data.

The department is currently developing a more formalized complaint resolution process to implement a statewide system for tracking and resolving complaints. A new computer database to manage complaints will allow TxDOT to process and track written, oral and e-mail complaints as well as generate regular reports to identify the types of complaints, trends and key issues. In addition, we have developed and implemented a one-page internet form for written complaints as recommended which is available on the department's website at http://www.txdot.gov/contact_us/complaints.htm. It should be noted, however, that due to the varied aspects of complaints the department receives, such a form may be too generic to accommodate each and every situation and may not adequately guide the complaint to provide vital information necessary to investigate the complaint. As this recommendation is further implemented, the department will continue to monitor complaints and make changes to the form as needed to accommodate all needs.

Recommendations for Management Actions

3.3 TxDOT should provide a formal process for staff with similar responsibilities to share best practices information.

The department concurs with this recommendation and is working to implement a best practices solution through our intranet site, Crossroads.

3.4 TxDOT should provide central coordination of the Department's major marketing campaigns.

TxDOT concurs with this recommendation and has begun looking into opportunities for the centralization of marketing campaigns statewide to implement such a program.

3.5 TxDOT should make its website easier to use.

The department concurs with this recommendation and has been discussing methods to improve navigation within TxDOT's website. Efforts are ongoing to move the web pages to a template for a more consistent look and feel. We are also looking into options for placing a searchable database for previous minute orders considered by the Transportation Commission as suggested.

Issue 4

Elements of TxDOT's Contracting Functions Lack Efficiency and Could Expose the State to Unacceptable Levels of Risk.

Recommendation for Contracting Framework – Change in Statute

4.1 Authorize TxDOT to use the design-build model of project delivery for traditional highway projects.

The department concurs with this recommendation.

Recommendation for Contracting Framework – Change in Statute and Management Action

4.2 Remove provisions in statute and rule requiring TxDOT to advertise its contract solicitations in local or statewide newspapers.

The department concurs with this recommendation.

Recommendations for Contracting Procedures – Management Actions

4.3 TxDOT should develop clear communication policies regarding contract solicitations for its professional services contracts.

The contracting sections of the department have been developing a non-disclosure form which will be ready for implementation after these sections complete the development of procedures governing communications.

The Sunset Staff Report focuses almost exclusively on engineering contracts, which is understandable given the volume of funds involved in such contracts. However, other negotiated contracts face similar issues and if new contracting policies are adopted, it would be helpful to have those policies applied to all relevant contracts. Inconsistencies in treatment among negotiated contracts may cause confusion.

4.4 TxDOT should provide additional information on overhead rates to districts and ensure that they use it.

TxDOT's contracting sections have been working to create and offer training on engineering contracts which include negotiating overhead rates. If such training is applied to engineering contracts, similar training should also be offered for other types of negotiated contracts.

4.5 TxDOT should set timeframes for each major step in the development of professional services contracts.

If timeframes are adopted for engineering contracts, such timeframes should also apply to other negotiated contracts.

Recommendations for Staffing and Oversight – Management Actions

4.6. TxDOT should consider providing additional professional staff to support its Consultant Contract Office.

The department concurs with this recommendation.

4.7 TxDOT should strengthen oversight and accountability of professional services contracts in its district offices.

The department not only concurs with this recommendation but has also started to implement such oversight and accountability measures in some of our districts. If TxDOT were to implement this recommendation statewide and establish offices to handle engineering contracts, those offices should also process other negotiated contracts for uniformity.

4.8 TxDOT should require contract management training for its professional services project managers and other employees involved in professional services contract administration.

TxDOT concurs with this recommendation and currently has contract management training in place for employees. We are also working towards improved professional service management and negotiations through regionalization of department operations and functions. The department is creating more standardized software to manage consultant contracts which will lead to greater efficiency and productivity. This software will allow for the transfer of lessons learned and facilitate training among staff, as well as aid managers with the management of contracts in a more timely and consistent manner. As with previous recommendations, if such a process is adopted for engineering contracts, it should also apply to other negotiated contracts by the department as well.

Recommendation for Staffing and Oversight – Change in Statute

4.9 Require the Contract Advisory Team to review, with the authority to stop solicitation of, TxDOT's development of comprehensive development agreements.

The department is aware of the risks associated with Comprehensive Development Agreements (CDAs) and has taken management actions to address such issues. Also, current statutory requirements related to CDAs through the Office of the Attorney General, the Legislative Budget Board and the State Auditor's Office provide for extensive review of such agreements. Department staff is unsure how the experience and expertise of the Contract Advisory Team will be able to assist with the review and solicitation of CDAs. In particular, any type of concession related to a CDA requires very specialized training and experience with similar agreements to identify any potential issues with the solicitation and/or procurement of such an agreement. In addition, potential developers could be discouraged by the possible volatility in the process, leading TxDOT to take on increased risks associated with certain projects.

Issue 5

Key Elements of TxDOT's Regulation of Motor Vehicle Dealers, Salvage Vehicle Dealers, and Household Goods Carriers Do Not Conform to Commonly Applied Licensing Practices.

Recommendation for Administration – Management Action

5.1 TxDOT needs to provide necessary resources to enforce its statutory provisions regarding salvage vehicle dealers.

The department concurs with this recommendation.

Recommendations for Licensing – Changes in Statute

5.2 Require new vehicle dealers to meet the same surety bond requirement as other dealers, subject to an assessment of financial condition.

Requiring TxDOT to establish bonding criteria would put the department in the position of determining financial condition based upon information submitted by the dealer. This would require dealers to undergo an additional licensing step that will increase workload and slow application processing. TxDOT will have no way of ascertaining financial condition without extensive investigation, further slowing the license process.

If the bond amount were to be increased from \$25,000 to \$250,000, consumers and lenders would have the ability to obtain a meaningful recovery against a dealer. An increased bond amount for all dealers, both franchised and independent, along with the requirement for them to obtain a surety bond would provide similar benefits to the recommendation as presented.

5.3 Establish a process for informing the public whether household goods carriers conduct criminal history checks on their employees.

TxDOT concurs with this recommendation, and feels it could be further enhanced through statutory changes authorizing the department to conduct criminal history background checks at the time of original registration and registration renewal of all directors, owners or general partners of household goods carriers in an effort to enhance the safety and protection of the moving public. However, the implementation of such a system will incur significant costs to the department; and many regulation and administrative fees for household goods carriers cannot be raised to offset such expenses without statutory changes.

Recommendation for Enforcement – Management Action

5.4 The Department should compile and report statistical information on complaints and enforcement actions in its household goods carriers registration program.

The department concurs with this recommendation and initiated a project late in 2007 to develop and implement a "Complaint Management System" for the intake of consumer complaint information, tracking related investigation, enforcement and meditation processes, and storage of related documents. This web-based system allows for collections and reporting of applicable management statistics, as well as allowing for the public to not only file and track complaints but view prior complaints, investigations and enforcement histories of household goods carriers.

TxDOT is also in the process of developing and implementing a "Consumer Guide to Moving" (or similar product) to enhance education and communication efforts with the public regarding a variety of consumer protection and household goods carriers moving topics, such as how to choose a mover, what to expect during a move, risks associated with contracting a move over the internet and other associated subjects.

Recommendations for Enforcement – Changes in Statute

5.5 Remove the prohibition against TxDOT enforcing advertising regulations against motor vehicle dealers and instead provide for phasing in enforcement.

The department concurs with the removal of the prohibition against TxDOT enforcing advertising regulations against motor vehicle dealers. However, allowing dealers one advertising violation over the course of one year may not completely deter false and misleading advertising. The interests of the public could be better served through immediate pursuance of penalties as is done with other civil penalties through the Texas Occupations Code. First time infractions of lesser violations could be acknowledged through a warning letter, allowing for a proportional response to the degree of harm caused by any particular violation.

5.6 Specify that the regulation of motor vehicle dealers is subject to the Administrative Procedure Act.

The department concurs with this recommendation.

5.7 Authorize the Department's Motor Vehicle Division to provide specialized training as an enforcement option for violations of motor vehicle dealer regulations.

The department concurs with this recommendation.

5.8 Authorize the Department to levy administrative penalties for salvage vehicle dealers and require an administrative penalty matrix for both salvage and motor vehicle dealers.

While the department concurs with this recommendation, any salvage dealer administrative penalties deposited to the State Highway Fund would allow TxDOT to better utilize such funds for the purpose of enforcement staffing and associated costs.

5.9 Remove the cap on the amount of total penalty for a knowing violation of the regulation of household goods carriers.

The department concurs with this recommendation.

5.10 Strengthen TxDOT's household goods carriers enforcement authority by including summary suspension.

The department concurs with this recommendation.

5.11 Authorize TxDOT to order refunds as part of an agreed order of complaints involving motor vehicle dealers and household goods carriers.

TxDOT concurs with this recommendation, and also feels it is equally important to authorize refunds in a contested case setting, regardless of whether the case is closed by an agreed order, a final order, or an order or dismissal after a case is withdrawn. Refund authority applying only to cases closed by agreed order, as opposed to all cases, could lead to an inequitable enforcement process. By differentiating between cases, it could cause unanticipated maneuvering by respondents, increase the contested caseload, and possibly provide less relief to consumers. In addition, any statutory change could affect agreed orders that have been executed for relief of damages related to the economic harm associated with the case.

5.12 Authorize TxDOT to issue cease-and-desist orders against unlicensed household goods carriers.

The department concurs with this recommendation.

Issue 6

Key Elements of TxDOT's Regulation of Outdoor Advertising Do Not Conform to Commonly Applied Licensing Practices.

Recommendation for Program Structure – Management Action

- 6.1 TxDOT should centralize the outdoor advertising regulatory program, requiring staff to report to the Right-of-Way Division instead of district engineers.**

The department concurs with this recommendation and is currently working to implement such a structure through management actions.

Recommendations for Administration – Changes in Statute

- 6.2 Require an outdoor advertising license with standard enforcement provisions for operators on rural roads that matches the requirements to operate on federal-aid roads.**

The department concurs with this recommendation.

- 6.3 Standardize the appeals process for denied sign permits by eliminating the Board of Variance.**

The department concurs with the elimination of the Board of Variance. However, to achieve consistency with all permit programs all abilities to grant variances should be eliminated. Federal law does not authorize a variance program for the primary system and not allowing for variances on rural roads would allow for consistent implementation.

- 6.4 Require that TxDOT deposit all outdoor advertising fees into the General Revenue-Dedicated Texas Highway Beautification Account.**

While the department concurs that all deposits related to outdoor advertising fees should be deposited into one account as opposed to multiple accounts, if the fees were to be deposited to the State Highway Fund it would allow TxDOT to better utilize the funds for the purpose of staffing and associated costs. The department currently has mechanisms in place in the State Highway Fund to appropriately account for funds received and expended through outdoor advertising.

Recommendation for Administration – Management Action

- 6.5 TxDOT should ensure that the cost of regulating outdoor advertising is covered by fee revenue generated by the program.**

The department concurs with this recommendation.

Recommendation for Licensing – Change in Statute

- 6.6 Authorize the Department to deny license renewal if a licensee's permits are in poor standing.**

The department concurs with this recommendation.

Recommendations for Enforcement – Changes in Statute

- 6.7 Require the Department to develop a complaints process, track and report complaints, and provide information to the public about how to file a complaint.**

The department concurs with this recommendation.

- 6.8 Provide standard administrative penalty authority for both federal-aid and rural roads, and require that all fines be deposited into the General Revenue-Dedicated Texas Highway Beautification account.**

The department concurs with this recommendation.

Recommendation for Enforcement – Management Action

- 6.9 The Department should scale enforcement actions to the seriousness of offenses.**

While the department concurs with scaling penalties to the seriousness of the offense, it should be noted that statutory authority is required for a majority of the penalties discussed in Issue 6 to be included in any department matrix.